TAN LAY SOON

v.

KAM MAH THEATRE SDN. BHD.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR SCJ
[CIVIL SUIT NO. 22-226-89]
22 JUNE 1992

CIVIL PROCEDURE: *Interim order in favour of purchaser - Request for further argument by chargor - Whether the granting of an order will fall foul of Supreme Court decision in favour of intervener - Whether the Court has the jurisdiction in light of the restriction in the National Land Code - Whether the Court will exercise its discretion to grant such order.*

The purchaser had obtained an order in terms as follows:

(a) That the defendant (chargor) authorise the plaintiff (purchaser) to redeem the lands under the Advance Issue Document of Title for Holding 1095 and Geran Mukim 79 and 80 for Holdings 1610 and 1611 respectively in Mukim 12 Daerah Barat Daya Penang now charged to Malayan United Finance Bhd. *vide* charge presentation No. 6763/84, Jilid 298;

(b) Alternatively, the plaintiff or the Senior Assistant Registrar be authorised to redeem the said lands for and on behalf of the defendant and any such redemption be treated as effected by the defendant;

(c) The titles so redeemed be retained in Court pending the determination of this civil suit;

(d) The amount of monies paid and expenses incurred by the plaintiff for the redemption be reserved to be dealt with at the trial of this suit;

(e) such further or other reliefs or directions; and

(f) the costs of application be costs in the cause.

The Counsel for the chargor was granted the request for further argument. He submitted that an order requiring the chargor to authorise the purchaser to redeem the lands concerned which was charged to the chargee (intervener) would fall foul of the Supreme Court judgment in *Malayan United Finance Bhd. v. Tan Lay Soon* allowing the appeal of the chargee against the judgment of this Court which refused the application of the chargee to remove the caveat lodged by the purchaser. The Court also had to consider two other factors. Firstly, whether it had the jurisdiction to make the order as in (a) above or something equivalent thereto. Secondly, if it had such jurisdiction, it had to consider whether to exercise its discretion by granting to the purchaser an order that the defendant do authorise the plaintiff to discharge the charge by tendering the amounts specified in s. 266(2) of the Code to the Registrar of the Court before the conclusion of the judicial sale.

Held:

[1] Para. G to the schedule to the Courts of Judicature Act 1964, in regard to the extent of the Court's jurisdiction, to make orders for the interim preservation of property, enacts that the Court may do so, "by sale or by injunction or the appointment of a receiver or the registration of a caveat or a *lis pendens* or in any other manner whatever."

[2] The Court was not at liberty to depart from its judgment that the purchaser's claim did disclose a serious question to be tried. Even if the Court was at liberty to reconsider the decision, there was no reason for departing from that view.

[3] The purchaser, having failed to resist the chargee's attempt to remove the caveat was not prevented from seeking a separate and distinct remedy as against the chargor for interim preservation of the subject matter in order to preserve the *status quo* until his claim is adjudicated upon.

[4] On the issue of justice and convenience, if the purchaser is denied the remedy, he will most probably never obtain an order for specific performance but only damages even if he succeeds at the final hearing.

[5] The Courts have inherent power to make any orders as may be necessary to prevent injustice or to prevent an abuse of the powers of the Court.

[6] In the result the order was affirmed.

[Plaintiff authorized to redeem the said lands. Chargor to pay costs of the proceedings to the purchaser.]

Cases referred to:

Tan Lay Soon v. Kam Mah Theatre Sdn. Bhd.; Malayan United Finance Bhd. v. Tan Lay Soon [1990] 2 MLJ 482; [1990] 3 CLJ (Rep) 183
Malayan United Finance Bhd. v. Tan Lay Soon [1991] 1 MLJ 504 ***(dist)***
Quinn v. Leathem [1901] AC 495 ***(cit)***
Moss v. Gallimore [1779] 1 Doug KB 279 ***(cit)***
Hood v. Newby [1882] 21 Ch D 605 ***(cit)***
Haji Abdul Rahman v. Mohamed Hassan [1917] AC 209 ***(cit)***
Eng Ah Mooi & Ors. v. Overseas Chinese Banking Corpn. Ltd. [1983] 1 MLJ 209 ***(not foll)***
Zainal Abidin bin Haji Abdul Rahman v. Century Hotel Sdn. Bhd. [1982] 1 MLJ 260 ***(cit)***
Beddow v. Beddow [1878] 9 Ch D 89 ***(foll)***
Chaplin v. Barnett [1912] 28 TLR 256 ***(foll)***
Mercantile Bank Ltd. v. The Official Assignee of the Property of How Han Teh [1969] 2 MLJ 196 ***(cit)***
Oh Hiam & Ors. v. Tham Kong [1980] 2 MLJ 159 ***(cons)***
Peareth v. Marriott [1883] 22 Ch 182 ***(cit)***
Hook v. Administrator - General of Bengal & Ors. 48 IA 187 ***(cit)***
Trusts of the Will of Tan Tye (Deceased) Yap Liang Neo v. Tan Yew Ghee & Anor. [1936] MLJ 147 ***(cit)***
Louis Drefus v. Arunanchala Ayya [1931] 58 IA 381 ***(cit)***
Films Rover International Ltd. v. Cannon Film Sales Ltd. [1987] 1 WLR 671 ***(cons)***
Manilal & Sons (M) Sdn. Bhd. v. Majumder [1988] 2 MLJ 305 ***(cit)***
Astro Exists Navegacion S.A. v. Southland Enterprise Co. Ltd. & Anor. (Chase Manhattan Bank N.W. intervening) [1982] 3 All ER 335 ***(cit)***
Smith v. Peters [1875] LR 20 Eq 511 ***(foll)***
TR Hamzah & Yeang Sdn. Bhd. v. Lazar Sdn. Bhd. [1985] 2 MLJ 45 ***(foll)***

Legislation referred to:

Banking & Financial Institutions Act 1989, s. 97
Contracts Act 1950, ss. 70, 71
National Land Code, ss. 249(1), 266(2), 206(1), (3)
Rules of the High Court 1980, O. 20 r. 11, O. 29 r. 2(1), O. 92 r. 4
Specific Relief Act 1950, s. 11(4)

Supreme Court Act 1981 [UK], s. 37
Supreme Court of Judicature Act 1873 [UK], s. 25(8)
Supreme Court of Judicature (Consolidation) Act 1925 [UK], s. 45

For the purchaser/plaintiff - R. R. Sethu; M/s. L.S. Tan & Co.
For the chargor/defendant - Wong Kim Fatt (Christina Chia with him); M/s. Christina Chia Ng & Partners
For the chargee/intervener - K.L. Loh

JUDGMENT

Edgar Joseph Jr J:

In this judgment, unless the context otherwise requires, I shall, for brevity and convenience, refer to the plaintiff, the defendant and the intervener as "the purchaser", "the chargor" and "the chargee", respectively.

On 3 January 1991, I had made orders in terms of the prayers (a), (c), (d) and (f) of purchaser's application, being encl. 30, wherein he had prayed for the following reliefs:

(a) that the defendant authorize the plaintiff to redeem the lands held under Advance Issue Document Of Title for Holding 1095, and Geran Mukim 79 and 80 for Holdings 1610 and 1611 respectively in Mukim 12 Daerah Barat Daya Penang now charged to Malayan United Finance Bhd. *vide* charge Presentation No. 6763/84, Jilid 298;

(b) Alternatively, the plaintiff or the Senior Assistant Registrar be authorized to redeem the said lands for and on behalf of the defendant and such redemption be treated as effected by the defendant;

(c) the titles so redeemed be retained in Court pending the determination of this civil suit;

(d) the amount of monies paid and expenses incurred by the plaintiff for the redemption be reserved to be dealt with at the trial of this suit;

(e) such further or other reliefs or directions; and

(f) the costs of the application be costs in the cause.

However, so far as prayer (a) was concerned the extracted order did not reflect what was intended by the Court when the order was pronounced in Chambers and so would have been amenable to correction under the Slip Rule - O. 20 r. 11, Rules of the High Court. Be that as it may, the point became academic because I had granted the request for further argument by Counsel for the chargor.

The background facts which have given rise to the proceedings now before me appear sufficiently from my judgment in *Tan Lay Soon v. Kam Mah Theatre Sdn. Bhd.; Malayan United Finance Bhd. v. Tan Lay Soon* [1990] 2 MLJ 482 and the judgment of the Supreme Court in *Malayan United Finance Bhd. v. Tan Lay Soon* [1991] 1 MLJ 504, allowing an appeal from that part of my judgment refusing the application of the chargee to remove the caveat lodged by the purchaser, and so need not be repeated.

The main plank in the submission of Counsel for the chargor was that an order whereby the chargor was required to authorise the purchaser to redeem the lands concerned now charged to the chargee would fall foul of the judgment of the Supreme Court aforesaid and so could not be made.

It is axiomatic, that every judgment must be read as applicable to the particular facts proved, since the generality of expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found (*Quinn v. Leathem* [1901] AC 495 HL at p. 506 per Lord Halsbury). So, too, expressions of Judges must be understood in relation to the subject matter before the Court; see *Moss v. Gallimore* [1779] 1 Doug. KB 279 at p. 283 per Buller, J; *Hood v. Newby* [1882] 21 Ch D 605.

Bearing these principles in mind, I note that in the course of its judgment, the Supreme Court in *Tan Lay Soon*, at p. 506 Col. 1 H & I said:

> It may be necessary to recapitulate that as between the appellant and the respondent both in the High Court and before us the pivotal issue is the indefeasibility and priority of the charge over the caveats on the part of the appellant and the right of the respondent, in the respondent's own words, to redeem the charge on the part of the respondent.

And, in the penultimate para. of its judgment there appears the following passage which I consider to be the *ratio decidendi*:

> In the view we take of this appeal we are disposed to reject the respondent's proposition that he has a statutory or equitable right of discharge or redemption of a charge under the provisions of the National Land Code but we would affirm the right of the chargor or the borrower to discharge a charge under the annexure to the charge which is to be read together with s. 249(1) of the Code which right ineluctably is not available to the respondent. Besides, under s. 266(1) of the Code, the right to tender payment before the judicial sale is specifically and exclusively granted to the chargor. The question of the competing right to discharge the charge on the part of the respondent does not arise at all and it follows, *a fortiori*, the priority of the charge prevails.

It is obvious from a reading of the judgment of the Supreme Court that all that had been decided was that having regard to the decision of the Privy Council in *Haji Abdul Rahman v. Mohamed Hassan* [1917] AC 209, the purchaser had no rights of direct enforcement or discharge as against the chargee and so the judgment of Salleh Abbas, FJ, (as he then was) speaking for the Federal Court in *Eng Ah Mooi & Ors. v. Overseas Chinese Banking Corpn. Ltd.* [1983] 1 MLJ 209, which held to the contrary (and upon which I had relied) was given *per incuriam*, and should not be followed.

Clearly, therefore, the Supreme Court did not deal with the issues which arose for decision as between the purchaser and the chargor. For example there was no suggestion that I had erred in the view I had taken, that there was a serious question to be tried as to whether there was a binding contract of sale and purchase as between the purchaser and the chargor. This is understandable because the Supreme Court was not concerned with the *in personam* claims the purchaser might have against the chargor and, indeed, the chargor was not even a party to the appeal before the Supreme Court simply because he never appealed.

The question whether the purchaser is entitled to an order that he be authorised by the chargor to tender the amounts due under the charge to the Registrar of the Court in order to have the charge cleared off the register, is thus at large notwithstanding the judgment of the Supreme Court in *Tan Lay Soon*.

In the first place, I must consider whether there is jurisdiction to make the order prayed for in para. (a) of Enclosure 30 or, more correctly, something equivalent thereto. I say "equivalent thereto" because as the chargor has no right of redemption in relation to the charged land conferred upon him by the Code or otherwise, he would be hardly in a position to authorise

the purchaser to exercise such a right. The maxim is *nemo dat quoad non habet*. The chargor does, however, have the right to discharge the Charge under the annexure to the charge read together with s. 249(1) of the National Land Code ("the Code") or, in other words, the right to pay off the amounts specified under s. 266(2) of the Code at any time before the conclusion of the judicial sale and he can therefore authorise the purchaser to exercise that right. To recapitulate, the question, therefore, which arises for decision regarding this part of the case is whether there is jurisdiction to require him to do so.

With regard to the extent of the Court's jurisdiction to make orders for the interim preservation of property the subject matter of any cause or matter, it is to be observed that the Courts of Judicature Act 1964, enacts (by p. 6 to the Schedule thereto) that the Court may do so, "by sale or by injunction or the appointment of a receiver or the registration of a caveat or a *lis pendens* **or in any other manner whatever**". (Emphasis provided).

Para. 6 to the Schedule to the Courts of Judicature Act 1964, is equivalent to the English s. 45(1) of the Supreme Court of Judicature (Consolidation) Act 1925, or its predecessor s. 25(8) of the Supreme Court of Judicature Act 1873. (See *Zainal Abidin bin Haji Abdul Rahman v. Century Hotel Sdn. Bhd.* [1982] 1 MLJ 260 FC). Speaking about the scope of the powers conferred by s. 45(1), Jessel MR in *Beddow v. Beddow* [1878] 9 Ch D 89, said this:

> That being so, it appears to me that the only limit to my power of granting an injunction is whether I can properly do so. For that is what it amounts to... I have unlimited power to grant an injunction in any case where it would be right or just to do so; and what is right or just must be decided, not by the caprice of the Judge, but according to sufficient legal reasons or on settled legal principles.

Also relevant is the protective measure of O. 29 r. 2(1) of the Rules of High Court which says:

> 2. (1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

The case of *Chaplin v. Barnett* [1912] 28 TLR 256 shows that O. 29 r. 2(1) extends to every case in which the Court sees that as between the parties something ought to be done for the security of the property the subject matter of the action or, as to which, a question may arise in the action.

Next, s. 206(3) of the Code, serves as a reminder that independently of the Code, recognition must be accorded to equitable and contractual interests relating to alienated land or any interest therein notwithstanding the need for proper instrument of dealing duly registered, as required under s. 206(1). (Per Raja Azlan Shah J (as he then was) in *Mercantile Bank Ltd. v. the Official Assignee of the Property of How Han Teh* [1969] 2 MLJ 196).

Now, a perusal of Clause 5 of the letter dated 10 March 1989 (reproduced in [1990] 3 CLJ (Rep) 183 at p. 186), which is the basis of the alleged contract of sale and purchase, reveals that there is express authorisation for the utilisation of the purchase price to pay the debt due under the charge in order to have it cleared off the register.

In this context, it is also pertinent to note what Lord Russell of Killowen had said regarding the equitable jurisdiction of our Courts to make orders *in personam* on grounds of conscience notwithstanding the provisions as to indefeasibility of the registered proprietor's title guaranteed under the Code when speaking for the Privy Council in *Oh Hiam & Ors. v. Tham Kong* [1980] 2 MLJ 159 at p. 164; this is how he put it:

a It was contended by the defendant that this means what it says: he being on the register his title is indefeasible and accordingly the Court cannot take it away from him, since it was neither alleged nor proved that there was fraud or misrepresentation to which he was a party, nor that his registration was obtained by forgery or by means of an insufficient or void instrument.

b Apart from authority their Lordships would not expect that the intervention of equity by a remedy *in personam* based upon a transaction to which the plaintiff and defendant were parties would be ousted by such provisions. The Torrens system is designed to provide simplicity and certitude in transfer of land which is amply achieved without depriving equity of the ability to exercise its jurisdiction *in personam* on grounds of conscience. In the instant case the defendant could have shown an indefeasible title had he sold Lot 3660, a step which he could not take because he undertook to the Court not to: the Court could have granted an injunction against sale, and that could scarcely have been described as an order inconsistent c with his indefeasible title. If the registered proprietor were a trustee, his indefeasible title would not have precluded intervention by the Court in execution of the trust: under the then Land Code there was no express provision for registration as trustee. The indefeasible title would not preclude an order for specific performance of a contract for sale by the proprietor. All these are instances of equity acting *in personam*, and indeed the order in the instant case may be described as an order *in personam* that the registered proprietor should defeat his own title.

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I therefore consider that there is substance in the submission of Counsel for the purchaser that the order equivalent to what he is contending for (as indicated above) is an order *in personam* within the principles enunciated by Lord Russell and could not therefore be said to be ousted by the provisions of the Code.

e I am therefore satisfied that I have jurisdiction by virtue of the combined effect of para. 6 of the Schedule to the Courts of Judicature Act, O. 29 r. 2(1), s. 206(3) of the Code and the principles enunciated by Lord Russell of Killowen in *Oh Hiam's* case, to grant to the purchaser an interlocutory mandatory order for preservation of the subject matter of the suit in aid of enforcing alleged contractual obligations provided it would be appropriate to do so.

In the second place, I must consider whether I should, in the exercise of my **discretion**, f grant to the purchaser the interlocutory order aforesaid.

It was further argued by Counsel for the chargor that the contemporary documents in the case, including the correspondence, reproduced in my judgment aforesaid reported in [l990] 2 MLJ 482, and the circumstances of the case, as a whole, did not disclose a concluded contract of sale and purchase between the purchaser and the chargor in respect of the lands concerned. To put the point in his own words, "at best the purchaser had a very weak case". g In support, he directed my attention to two new affidavits by a certain Yap Yee Choon, a director of the chargor, one being an affidavit in opposition dated 5 June 1992, and the other, a further affidavit dated 10 June 1992, which were, of course, not before me, when I made the order in chambers on 3 January 1990.

With respect, I do not consider that I am at liberty to depart from the view I had expressed h in my judgment aforesaid that the purchaser's claim did disclose a serious question to be tried as to whether there was any binding contract of sale and purchase for, it is trite law, that a decision given by a Court at one stage on a particular matter or issue is binding on it at a later stage in the same suit or in a subsequent suit. (See *Peareth v. Marriott* [1883] 22 Ch 182; *Hook v. Administrator-General of Bengal & Ors*. 48 IA 187; *In the matter of Trusts of the Will of Tan Tye (Deceased) Yap Liang Neo v. Tan Yew Ghee and Anor*. [1936]

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MLJ 147). Nor may parties raise for a second time in the same suit an issue that has already been determined expressly or by necessary implication. (See *Louis Drefus v. Arunanchala Ayya* [1931] 58 IA 381).

But, even if I were at liberty to reconsider the question whether there was a binding contract of sale and purchase, I see no reason whatever for departing from the view I had earlier expressed thereon in my judgment ([1990] 2 MLJ 482) wherein all the material evidence is set out and, indeed, I feel a high degree of assurance that at the final hearing the purchaser will succeed in establishing that there was a binding contract of sale and purchase. This is the higher standard of proof that is required for the grant of a mandatory interlocutory injunction which is in substance and effect the interlocutory order the purchaser now seeks.

But, I note that in *Films Rover International Ltd. v. Cannon Film Sales Ltd.* [1987] 1 WLR 671 Hoffmann J stated that the fundamental principle on interlocutory applications for prohibitory and mandatory injunctions alike is that the Court should take whichever course appears to carry the lower risk of injustice if it should turn out at trial to have been 'wrong'. He continued:

> If it appears to the Court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it even though the Court does not feel a 'high degree of assurance' about the plaintiff's chances of establishing his right, there cannot be any rational basis for withholding the injunction.

I need hardly say that I have given the fullest consideration to the various submissions of Counsel on all sides upon the hearing of further arguments in respect of the question whether there was concluded contract of sale and purchase and I would uphold the submissions of Counsel for the purchaser but without, of course, making a conclusive finding that there was a concluded contract of sale and purchase, for that can only be done at the final hearing.

Turning to the broader issues of justice and convenience, this involves a balancing exercise.

The purpose of the order contended for by Counsel for the purchaser is to provide for the interim preservation of the subject matter of the suit herein, to wit, the lands concerned, by procuring the discharge of the Charge registered against them as provided for in the alleged contract of sale and purchase. If the purchaser succeeds at the final hearing, then the probabilities are that he would be entitled, subject, of course, to the payment by him of the purchase price, to an order for specific performance by way of a transfer to him of the lands concerned (See s. 11(4) of the Specific Relief Act 1950). If, on the other hand, the purchaser fails at the final hearing, the chargor would be entitled to keep his lands although the purchaser would most probably be entitled to re-imbursement of the monies he has advanced for the discharge of the charge. (See ss. 70 and 71 of the Contracts Act).

As for the chargee, it will on no account be prejudiced in the event of the order prayed for by the purchaser being made, and complied with, for it will receive all monies due to it under the charge and resort to its remedies under the Code cannot arise.

On the other hand, if the purchaser is denied the remedy he now seeks, then even if he succeeds at the final hearing, he will most probably never obtain an order for specific performance but only damages, for by then, the land may very well have been disposed of having regard to the escalation in land prices since the date of the transaction.

Accordingly, in my view, the purchaser, having failed to resist the chargee's attempt to remove the caveat is not prevented from seeking a separate and distinct remedy as against the chargor for interim preservation of the subject matter in order to preserve the *status quo* until his

claim is adjudicated upon. If, in certain circumstances, as against the same party, a plaintiff may be entitled to both a caveat and an injunction (See *Manilal & Sons (M) Sdn. Bhd. v. M. Majumder* [1988] 2 MLJ 305 SC), I fail to see why, having failed to resist removal of a caveat by one party, a plaintiff may not, in appropriate circumstances, obtain an order whose object is to ensure interim preservation of the subject matter of the litigation against another party.

Lastly, it was contended in chambers, though not on hearing further argument, that to grant the purchaser the order he now seeks would mean that the chargee would be required to disclose the amount owing under the charge by the chargor without the consent in writing of the chargor and this would appear to be in contravention of the provisions of s. 97 of the Banking and Financial Institutions Act 1989.

In my view, there is no substance in this submission. The privilege of confidentiality is that of the customer who is the chargor and who by Clause 5 of his letter dated 10 March 1989 had expressly authorized utilization of the proceeds of sale to discharge its liability to the chargee. This would amount to the required consent, at least implied, if not express.

Moreover, by virtue of the order for interim preservation of the subject matter which the purchaser now seeks, he would become the agent or receiver of the chargor for the limited purpose of paying off the amounts due under the charge in order to preserve the subject matter.

Furthermore, the bank has already commenced proceedings to enforce the charge being OS 749/89 and had gone on to obtain an order for sale. This, of course, means that it had already disclosed the chargor's account. All that the purchaser wants now is an updated account for the chargor in order to effect payment to the chargee.

Looking back, I must add that I had also paid special regard to the interests of all parties concerned, keeping in mind their foreseeable positions, considerations of hardship, the balance of convenience and all other relevant discretionary factors.

In the result, I would affirm the order I had made in chambers on 3 January 1991, with the qualification, that I would substitute the words "IT IS ORDERED that the defendant do authorise the plaintiff to discharge the charge bearing presentation No. 6763/84, Jilid 298 Folio 78, created over the lands held under Advance Issue Document of Title for Holding 1095 and Geran Mukim 79 and 80 for Holdings 1610 and 1611, respectively, all in the Mukim 12 Daerah Barat Daya, Penang, now charged to Malayan United Finance Bhd., the chargee/ intervener, by tendering the amounts specified in s. 266(2) of the Code to the Registrar of the Court before the conclusion of the judicial sale" for the words "IT IS ORDERED that the plaintiff be and is hereby authorized to redeem the said lands held under Advance Issue Document of Title for Holding 1095 and Geran Mukim 79 and 80 for Holdings 1610 and 1611 respectively all in the Mukim 12 Daerah Barat Daya, Penang, now charged to Malayan United Finance Bhd. *vide* charge Perserahan No. 6763/84 Jilid 298 Folio 78".

The chargor will have to pay the costs of the proceedings to the purchaser.

Since settling this judgment in draft, my attention has been drawn earlier today by Counsel for the purchaser, to the judgment of the Court of Appeal in England in *Astro Exists Navegacion SA. v. Southland Enterprise Co. Ltd. and Anor. (Chase Manhattan Bank NW. intervening*) [1982] 3 All ER 335 where it was held that under s. 45(1) Supreme Court of Judicature (Consolidation) Act 1925, replaced by s. 37 of the Supreme Court Act 1981, which is equivalent to, though not as widely drawn, as our p. 6 of the Schedule to the Courts of

Judicature Act 1964), the Court has jurisdiction, where it appears just and convenient to do so, to order interim relief by granting an interlocutory mandatory injunction to enforce a contractual obligation before trial. In so holding, the Court of appeal had followed *Smith v. Peters* [1875] LR 20 Eq 511 in which it was held that the Court has jurisdiction to make **any** interlocutory order which is reasonably asked as ancillary to the administration of justice at the hearing of the cause.

The cases of *Astro* and *Smith v. Peters*, were cited with approval by the Federal Court in *TR. Hamzah & Yeang Sdn. Bhd. v. Lazar Sdn. Bhd.* [1985] 2 MLJ 45 wherein reference was also made to the provisions of O. 92 r. 4 which reminds the High Court of its inherent of the powers to make any orders as may be necessary to prevent injustice or to prevent an abuse of the powers of the Court. I am fortified in the conclusion at which I have arrived by these authorities.

Also found at [1992] 4 CLJ 1922